

MENTAL HEALTH LAWS AND PATIENTS' RIGHTS IN CALIFORNIA

This slide show covers the basic laws pertaining to mental health patients' rights and mental health holds in the state of California.

It is intended for informational or educational purposes only.

The laws described in this slide show are found in the California Welfare and Institutions Code, starting in section 5000, and in Title 9 of the California Code of Regulations.

These laws are often referred to as the "LPS Act".

LPS ACT: The basics

Why LPS?



**Rights of individuals with
mental health disorders**



**Civil commitment
laws and procedures**

LANTERMAN–PETRIS-SHORT ACT (LPS)

History and
Intent of LPS
Law

WHY LPS?

- To end the inappropriate, indefinite, and involuntary commitment of individuals with serious mental health disorders
 - Pre-LPS Law: Judicial commitment
 - No due process
 - Loss of civil and constitutional rights
 - High power differential = high rate of abuse
- How do we protect an individual's basic human rights, even if they are experiencing a mental health crisis?

LPS ACT: OVERVIEW

- **The Lanterman–Petrus–Short (LPS) Act- 1967**
 - Co-authored by California State Assemblyman Frank Lanterman and California State Senators Nicholas C. Petris and Alan Short.
 - Signed into law by Governor Ronald Reagan
 - The Act went into full effect on July 1, 1972
 - California Welfare & Institution Code, section 5000 et seq.
 - Concerns the involuntary civil commitment to a mental health institution in the State of California
 - The act set the precedent for modern mental health commitment procedures in the United States

- Aimed at 9 areas of legislative intent:

LPS ACT: LEGISLATIVE INTENT

1. To end the inappropriate, indefinite, and involuntary commitment of mentally disordered persons, people with developmental disabilities, and persons impaired by chronic alcoholism, and to eliminate legal disabilities;
2. To provide prompt evaluation and treatment of persons with serious mental disorders or impaired by chronic alcoholism;
3. To guarantee and protect public safety;
4. To safeguard individual rights through judicial review;
5. To provide individualized treatment, supervision, and placement services by a conservatorship program for gravely disabled persons;

LPS ACT: LEGISLATIVE INTENT

6. To encourage the full use of all existing agencies, professional personnel and public funds to accomplish these objectives and to prevent duplication of services and unnecessary expenditures
7. To protect mentally disordered persons and developmentally disabled persons from criminal acts
8. To provide consistent standards for protection of the personal rights of persons receiving services...
9. To provide services in the least restrictive setting appropriate to the needs of each person receiving services...

PATIENTS' RIGHTS

WHAT ARE PATIENTS' RIGHTS?

WHAT DO ADVOCATES DO?

WHAT CAN AN INDIVIDUAL EXPECT
WHEN RECEIVING INPATIENT
MENTAL HEALTH
SERVICES?

- Undeniable rights
- Deniable rights
- Right to refuse
- Voluntary treatment
- Involuntary treatment

LPS LAW: PATIENTS' RIGHTS

- The LPS act specifically requires that treatment, rehabilitation and recovery services be provided in the least restrictive manner possible
- An individual has the right to treatment services that:
 - Promote the potential of the person to function independently
 - Safeguard the personal liberty of the individual
- LPS permits involuntary hospitalization for individuals for whom such confinement with its accompanying severe deprivation of liberty, is necessary and appropriate
- LPS act provides due process for individuals on involuntary mental health holds
- LPS protects individuals' rights to autonomy

WHAT IS PATIENTS' RIGHTS ADVOCACY?

“Expressed Wish” vs. “Best Interest”

- Advocacy is the process of promoting and representing clients' rights and interests through direct assistance, monitoring, training and policy review
- Advocates ensure that the statutory and constitutional rights of recipients of mental health services are respected
- The Patients' Rights Advocate represents the **“Expressed Wish”** of the client. They act as the client's voice.

PATIENTS' RIGHTS: FOR THE PRACTITIONER

- Advocates assist staff in ensuring that all clients are notified of their rights
- Act as consultant to mental health professionals
- Act as liaison between the advocacy program and the State Office of Patients' Rights

W&I Sec. 5550:

(b) No person shall knowingly obstruct any county patients' rights advocate in the performance of duties as described in this chapter, including, but not limited to, access to clients or potential clients, or to their records, whether financial, medical, or otherwise, or to other information, materials, or records, or otherwise violate the provisions of this chapter.

(e) Any person or facility found in violation...shall pay a civil penalty, as determined by a court, of not less than one hundred dollars (\$100), or more than one thousand dollars (\$1,000) which shall be deposited in the county general funds.

HANDBOOK

Rights for Individuals in Mental Health Facilities

Admitted Under the Lanterman-Petris-Short Act



PATIENTS' RIGHTS: FOR THE CLIENT

- Representation of client's expressed wish
 - In Certification Hearings
 - In Capacity Hearings
- Counsel clients on options and implication of those options
- Assist the client to make informed choices
- Investigate grievances and complaints in LPS facilities, Community Care Homes, MH providers
- Educate individuals on LPS law and rights afforded to them
 - What are these rights?

MENTAL HEALTH PATIENTS' RIGHTS



MOSAIC FOREST

Alice Washington, 2004

Mental health patients have the same legal rights guaranteed to everyone by the Constitution and laws of the United States and California.

YOU HAVE THE RIGHT:

- To dignity, privacy and humane care
- To be free from harm including unnecessary or excessive physical restraint, medication, isolation, abuse and neglect
- To receive information about your treatment and to participate in planning your treatment
- To consent or refuse to consent to treatment, unless there is a legally-defined emergency or a legal determination of incapacity
- To client-centered services designed to meet your individual goals, diverse needs, concerns, strengths, motivations and disabilities
- To treatment services which increase your ability to be more independent
- To prompt medical care and treatment
- To services and information in a language you can understand and that is sensitive to cultural diversity and special needs
- To keep and use your own personal possessions including toilet articles
- To have access to individual storage space for your private use
- To keep and spend a reasonable sum of your own money for small purchases
- To have reasonable access to telephones—both to make and to receive confidential calls or have such calls made for you
- To have access to letter-writing material and stamps—to mail and to receive unopened correspondence
- To wear your own clothes
- To social interaction, participation in community activities, physical exercise and recreational opportunities
- To see visitors every day
- To see and receive the services of a patient-advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services
- To religious freedom and practice
- To participate in appropriate programs of publicly supported education
- To be free from hazardous procedures
- And all other rights as provided by law or regulation

FOR MORE INFORMATION, CONTACT YOUR LOCAL COUNTY PATIENTS' RIGHTS ADVOCATE:

Advocates Please
Place Your Address &
Phone Number Here

IF YOU ARE UNABLE TO CONTACT YOUR LOCAL COUNTY PATIENTS' RIGHTS ADVOCATE, YOU MAY CONTACT:
Office of Patients' Rights—(916) 575-1610
Office of Human Rights—(916) 654-2327

UNDENIABLE RIGHTS

- **W&I Sec. 5325.1: Persons with mental illness shall have rights including, but not limited to, the following:**
 - 1. A right to treatment services which promote the potential of the person to function independently; treatment should be provided in ways that are least restrictive of the personal liberty of the individual**
 - 2. A right to dignity, privacy, and humane care**
 - 3. A right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect; medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program**
 - 4. A right to prompt medical care and treatment**
 - 5. A right to religious freedom and practice**
 - 6. A right to social interaction and participation in community activities**
 - 7. A right to physical exercise and recreational opportunities**
 - 8. A right to be free from hazardous procedures**
 - 9. A right to participate in appropriate programs of publicly supported education.**

DENIABLE RIGHTS

- **W&I Sec. 5326:** The professional person in charge of the facility or state hospital or his or her designee may, **for good cause**, deny a person any of the rights under Section 5325...
 - **Good cause exists when:**
 - The exercise of the specific right would be injurious to the patient OR
 - There is evidence that if the specific right, if exercised would seriously infringe on the rights of others, OR
 - The institution would suffer serious damage if the right was not denied, AND
- there is no less restrictive way of protecting the interests of the person/others/facility.**
- **The right to refuse psychosurgery and the right to see an advocate may never be denied**
 - **Documentation must accompany any denial of right**
 - Date/Time, specific right being denied, good cause for denial of right, review of denial every 24 hours, signature of person in charge authorizing denial of right
 - **Common denials: right to wear one's own clothing, have visitors every day, phone calls (excessive 911 or harassing calls), etc.**

INFORMED CONSENT TO MEDICATION AND THE RIGHT TO REFUSE

- The right to exercise informed consent to medication:
 - The following information shall be given orally to the patient*:
 1. The nature of the mental illness, or behavior, that is the reason the medication is being given or recommended.
 2. The likelihood of improving or not improving without the medication.
 3. Reasonable alternative treatments available.
 4. The name and type, frequency, amount, and method of dispensing the medication, and the probable length of time the medication will be taken.
 5. The fact that the information has or has not been given shall be indicated in the patient's chart.
- W&I Sec. 5325.2: Any person who is subject to detention ... shall have the right to refuse treatment with antipsychotic medication.
 - Except when:
 - An emergency situation in which preservation of life or the prevention of serious bodily harm to the person and others and it is impractical to first gain consent
 - No long-acting antipsychotic medications are to be used
 - A Riese hearing has occurred and a judge has ruled that the individual lacks capacity to refuse antipsychotic medications (only applies for the hold the judgment was submitted on)

RIESE HEARING: CAPACITY TO REFUSE

- **Riese v St. Mary's Hospital and Medical Center (1987)**
 - Judicial decision recognizing that persons detained pursuant to LPS have a right to give or refuse consent to medication prescribed for treatment with psychiatric medications
 - At the core of Riese is the recognition that mental health patients may not be presumed to be incompetent solely, because of their involuntary hospitalization*
- **Capacity hearing:**
 - Petitioner is the prescriber (facility/doctor) and bears the burden of proving the refuser's incapacity to refuse medication; must show clear and convincing evidence to defend the intrusive denial of rights.
 - In the court hearing, the referee decides whether the patient:
 1. Is aware of his/her situation (e.g. diagnosis/condition)
 2. Is able to understand the benefits and risks of, and alternatives to, the medication
 3. Is able to understand and evaluate the medication information and participate in the treatment decision through a rational thought process
 - Referee is not deciding what is best treatment, only patient's ability to consent
- **Hearings must be held for each involuntary detainment period (5250, 5260, 5270, 5300)**
- **Long-acting anti-psychotic medications may not be used**

Summary:

- LPS law protects individuals' rights
- LPS law allows practitioners to provide mental health services to individuals
- Some rights cannot be denied under any circumstances
- Some rights may be denied with good cause
- Your county's Patients' Rights Advocate can assist you in determining the legality of denying rights

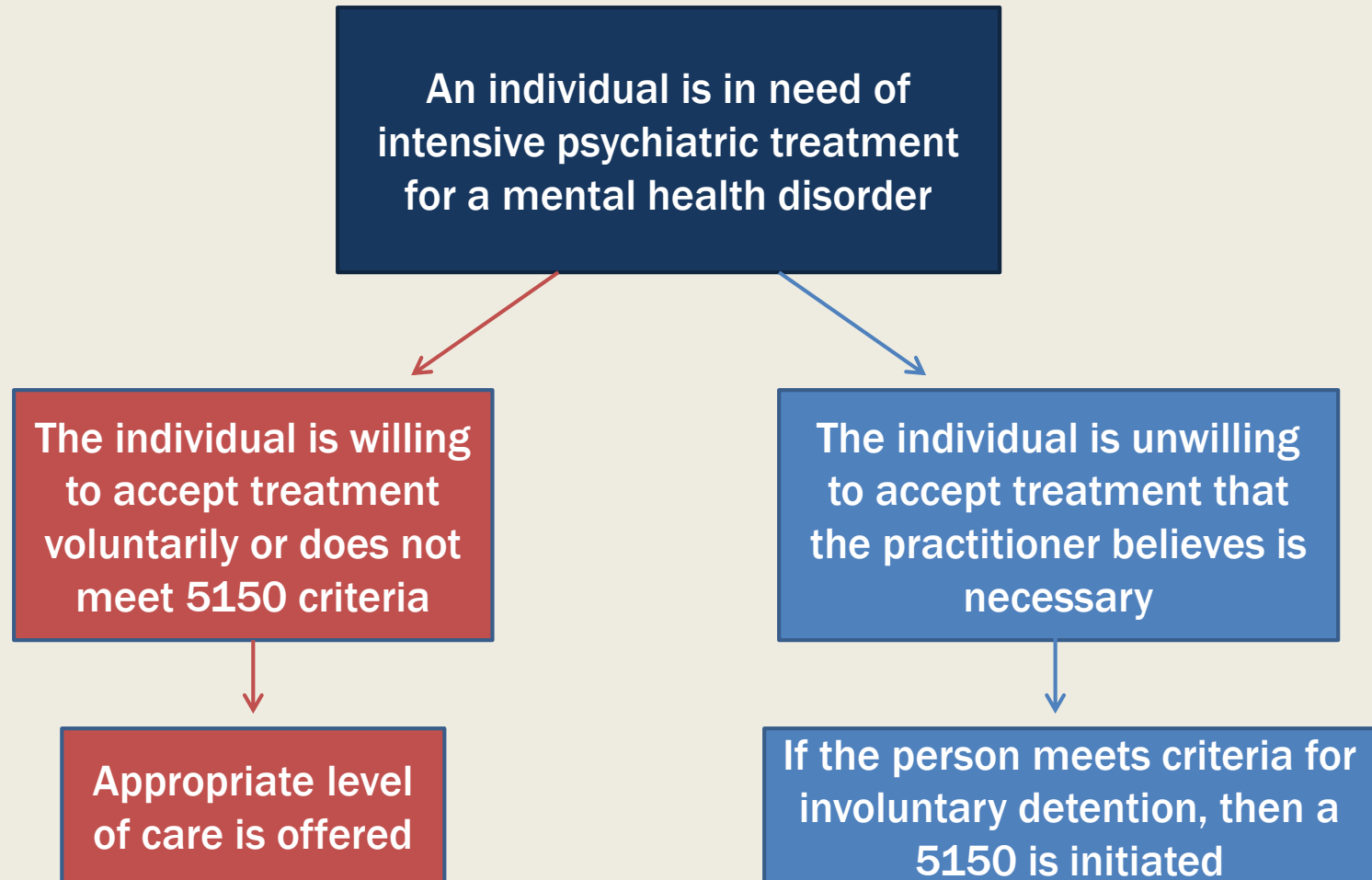
Next:

- Detention under the Lanterman-Petris-Short Act

Before we start discussing the ability to detain an individual on an involuntary hold (5150), let us look at the first requirement for any evaluation:

Willingness to accept treatment on a voluntary basis

Pathways to treatment



VOLUNTARY TREATMENT

- **Legal standard:** The patient is “willing or able to accept treatment on a voluntary basis”
- **W&I Sec. 5003:**
 - **Nothing** in this part shall be construed in any way as **limiting the right of any person to make voluntary application at any time** to any public or private agency or practitioner for mental health services, either by direct application in person, or by referral from any other public or private agency or practitioner.
- **W&I Sec. 5151:**
 - (a) If the facility for 72-hour treatment and evaluation admits the person, it may detain him or her for evaluation and treatment for a period not to exceed 72 hours.
 - (b) Prior to admitting a person to the facility for 72-hour treatment and evaluation pursuant to Section 5150, the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the **appropriateness of the involuntary detention**.
 - (c) If in the judgment of the professional person in charge of the facility providing evaluation and treatment, or his or her designee, **the person can be properly served without being detained**, he or she shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a **voluntary basis**.

VOLUNTARY TREATMENT

■ Legal rights of voluntary patients:

- The right to discharge themselves from a facility at any time
 - W&I Sec. 6000 (b), 6002, 6005, 6006
 - Title 9, C.C.R. Sec. 865
- The right to refuse anti-psychotic medications
 - Title 9, C.C.R. Sec. 850-856
- The right not to be placed in seclusion and/or restraint
 - Any use of seclusion/restraint must meet legal criteria for emergency and be accompanied by an evaluation of appropriate legal status
- The individual must be given the option of voluntary treatment throughout all the stages of the commitment process, except when a post-certification for danger to others is initiated (W&I Sec. 5260, 5300)

INVOLUNTARY TREATMENT

- If an individual is unwilling or unable to accept treatment on a voluntary basis, an application for involuntary detention for evaluation and treatment may be placed
- Who can write an application for involuntary detention?
 - Law enforcement
 - Persons designated by the County Mental Health Director
- The ability to place a person on an involuntary hold in the community is the only situation outside of law enforcement where an individual may take away another individual's civil right to freedom and detain him/her against his/her will
 - This is a serious decision, and one that should never be made lightly

Individual
unwilling to
accept voluntary
treatment

Civil commitment laws and procedure

Individual willing
to accept
voluntary
treatment

If at any time the individual
meets criteria for
DTS/DTO/GD and is
unwilling to continue
treatment, he/she can be
placed on a hold.

5150
72 hour hold
DTS/DTO/GD

5250
14 day hold
DTS/DTO/GD

5260
Additional 14
day hold- DTS

5300
Additional 180
day hold- DTO

5270
Additional 30
day hold- GD

5352
LPS T-Con
30 days- GD

5350
“Permanent” LPS
Conservatorship
(1 year)- GD

**5150: Application for
Involuntary Detainment
for Mental Health Evaluation
and Treatment**

Three Key Elements:

1. Probable Cause



2. Mental Disorder



3. Meets criteria

- Danger to Self
- Danger to Others
- Gravely Disabled



All three elements must be documented and substantiated. Remember, this is a legal, rather than a clinical document...

Legal
Standard
for
Involuntary
Detention

(The 72
Hour Hold)

1. PROBABLE CAUSE

■ Definition of probable cause for LPS law:

- “To constitute probable cause to detain a person pursuant to section 5150, **a state of facts must be known** to the peace officer (or other authorized person) that would lead a person of ordinary care and prudence to believe, or entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or, herself or is gravely disabled..
- ...In justifying a particular intrusion, the officer **must be able to point to specific and articulable facts** which, taken together with rational inferences from those facts, reasonably warrant his belief or suspicion..
- ...Each case must be decided on the facts and circumstances presented to the officer **at the time of detention...**
- ...The officer is **justified in taking into account the past conduct, character, and reputation of the detainee...**”

2. MENTAL DISORDER

- In order to be detained under W&I Sec. 5150, the person must be, “as a result of a mental disorder”, a danger to self, others, or gravely disabled
- There must be an **articulable connection** between the mental disorder and the dangerousness or the inability to provide for oneself
 - Danger to self of others without a mental disorder does not meet the standard
 - Inability to provide food, clothing, and shelter without a mental disorder is not enough
 - For example: an individual may find him/herself unable to provide food, clothing and shelter due to a recent divorce or loss of employment, but this does not make them pursuant to a 5150 hold.
- Chronic Alcoholism also qualified for a hold if it results in danger to self/others or grave disability

3. DANGER TO SELF, OTHERS AND GRAVE DISABILITY

■ Danger to Self (DTS)

- Deliberate intention to injure oneself (i.e. overdose)
- Disregard of personal safety to the point where injury is imminent (i.e. wandering around in heavy traffic)
- The danger must be: present, immediate, substantial, physical and demonstrable

■ Danger to Others (DTO)

- Based on words or actions that indicate an intent to cause harm to a particular individual or intends to engage in dangerous acts with gross disregard for the safety of others

■ Grave Disability (GD)

- “A condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs of food, clothing or shelter”
- For minors: “Unable to utilize the elements of life... even though they are provided to the minor by others”
- Courts have ruled that if a person can survive safely in freedom with the help of willing and responsible third parties, then he/she is not gravely disabled

Refusing treatment is not evidence of GD. Neither is poverty or choice of lifestyle (i.e. homelessness).

LIABILITIES ASSOCIATED WITH A 5150 HOLD

- Anyone who knowingly or willfully is responsible for detaining a person in violation of the commitment statutes is liable in a civil code action by the detained party (W&I 5259)
- The writer of a 5150 shall not be held civilly or criminally liable for any action by a person released before the end of the 72-hours (W&I 5154)
- If the individual assessed meets detention criteria, and probable cause is supported due to accounts of someone other than the designated person (e.g., a friend or family member), the person giving the information may be liable for giving an intentionally false statement (W&I 5150)

5150: Application for Involuntary detention for psychiatric evaluation and treatment

Legal requirements when an application for 5150 has been filed:

1. A facility may hold a patient on a 72 hour detention for not more than 72 consecutive hours
2. An evaluation must be provided as soon as possible after admission
3. The facility must make reasonable attempts to notify the patients' next of kin, unless the patient requests this information not be provided
4. If the person is receiving medication as a result of their mental illness, written and oral information about the probable and possible side effects of the medication must be given as soon as possible after detention
5. The person must be given the following information orally and in writing by the LPS facility:
 - The detention criteria the person is believed to meet
 - The facts upon which these allegations are based
 - The length of time the person will be held
 - Notification of the right to a hearing before a court officer if the detention lasts longer than 72 hours

TREATMENT FOLLOWING A 5150 HOLD

- A 5150 is for 72 hours of assessment and treatment
 - At the conclusion of 72 hours, the individual must be:
 1. Released
 2. Signed in Voluntary
 3. Placed on a 5250 hold
- If a person is still meeting the criteria for danger to self, danger to others or grave disability, the facility may ask for an additional 14 days of involuntary treatment, a 5250 hold
 - The individual has the right to contest the doctor's request for additional treatment in a Certification Review or Writ of Habeas Corpus Hearing

By the end of the 5250 (14 day) hold, the patient must either be:

1. Released
2. Sign in voluntary
3. Certified on a 5250 (14 day hold)

The professional person shall not be held civilly or criminally liable for any action by a person released at the end of the 72 hours*

If the facility clinicians conclude that the person is in need of additional treatment beyond the 72-hours, they may certify the person for an additional 14 days of treatment, a 5250 hold, but only if the person has first been offered voluntary treatment and has refused it

SUBSEQUENT TREATMENT HOLDS

- **5250: 14 day hold for DTS, DTO or Grave disability**
 - An advisement stating the specific reasons for detention must be provided
 - Individual has the right to a certification hearing and writ of habeas corpus
 - Individual must be offered treatment voluntarily, and is unwilling or unable to accept
- **5260: 14 day hold for DTS**
 - An additional 14 days after 5250 has concluded
 - Requires a second notification and certification hearing
 - Voluntary must be offered
- **5270: 30 day hold for Grave Disability**
 - An additional 30 days of intensive treatment after 5250 has concluded
 - Same due process rights, voluntary must be offered first
- **5300: 180 day hold for DTO**
 - Requires a court hearing; individual may ask for a jury
 - Voluntary does not need to be offered

By the end of the 5250 (14 day) hold, the patient must either be:

1. Released
2. Sign in voluntary
3. Certified on an additional hold for treatment

Individual is
imminently
suicidal

5260

14 day hold for DTS
(may not be
repeated)

Individual is still
meeting criteria
for Grave
Disability

5270

30 day hold for GD

Individual is
demonstrably
dangerous to
others

5300

180 day hold for
DTO
(can be repeated)

Conservatorship

5250: Certification for an additional 14 days of intensive treatment

5250: Certification for an additional 14-days of intensive treatment

- The client must continue to meet the legal criteria for DTS/DTO/GD
- The client may be certified on or before the expiration of the 72-hour hold. The client may also be certified during a period of voluntariness that occurs after the 72 hour hold
- The Notice of Certification must be signed by two people
- A copy of the certificate must be given to:
 - The patient
 - The advocate
 - A copy kept in the client's chart

State of California - Health and Human Services Agency		Department of Mental Health
NOTICE OF CERTIFICATION MH 1760 (Rev. 06/06)		Confidential Patient Information See Welfare & Institutions Code Sections 5328 and Penal Code 11142
The authorized agency providing evaluation services in the County of _____ has evaluated the condition of:		HIPAA Privacy Rule 45 C.F.R. § 164.508
Name _____		
Address _____		
Marital Status _____ Date of Birth _____ Sex _____		
We, the undersigned, allege that the above-named person is, as a result of a mental disorder or impairment by chronic alcoholism (Mark all that apply):		
<input type="checkbox"/> A danger to others <input type="checkbox"/> A danger to himself or herself <input type="checkbox"/> Gravely disabled as defined in paragraph (1) of subdivision (b) or subdivision (1) of Section 3008 of the Welfare and Institutions Code		
*Strike out all inapplicable classifications.		
The specific facts which form the basis for our opinion that the above-named person meets one or more of the classifications indicated above are as follows:		
The above-named person has been informed of this evaluation, and has been advised of the need for, but has not been able or willing to accept treatment on a voluntary basis, or to accept referral to, the following services:		
We, therefore, certify the above-named person to receive intensive treatment related to the mental disorder or impairment by chronic alcoholism beginning this _____ day of _____, 20____, in the intensive treatment facility herein named _____		
_____ Date _____		
Signature _____		
Signature _____		
I hereby state that I delivered a copy of this notice this day to the above-named person and that I informed him or her that unless judicial review is requested, a certification review hearing will be held within four days of the date on which the person is certified for a period of intensive treatment and that an attorney or advocate will visit him or her to provide assistance in preparing for the hearing or to answer questions regarding his or her commitment or to provide other assistance. The court has been notified of this certification on this day.		
Signature _____		
Copies: Person Certified-Personally delivered Person's Attorney/Advocate		

5250: DUE PROCESS

- **Written notice and explanation of the 5250 14-day hold must be given to the patient and must include:**
 - A statement of the specific reasons for the decision
 - The right to assistance from an advocate/attorney
 - The right to a Certification Review Hearing within 4 days
 - The right to appear before a judge in a Writ of Habeas Corpus
- **Certification Hearing**
 - Is scheduled automatically within 4 days of a certification (5250) being placed
 - The patient has the right to contest the 5250 hold and present evidence to a hearing officer as to why they do not meet the grounds of DTS/DTO/GD
 - The burden of proof to show probable cause rests with the facility petitioning the court
 - If the client is certified for additional treatment, they may request a Writ hearing to appeal the decision made in the Certification Hearing
 - If the client is decertified, the facility must release the patient or offer voluntary admission
- **Writ of Habeas Corpus**
 - May be requested at any time during an involuntary detention, and may be requested for each period of detainment (5150, 5250, 5270, etc.)
 - Held within two judicial days of filing the request
 - A Public Defender is assigned to assist the client during the proceedings

**Additional treatment for DTS/DTO/GD
5260/5300/5270**

5260: RECERTIFICATION ON 14-DAY HOLD FOR DANGER TO SELF

- At the expiration of the 5250 14-day certification, a person may be detained for a maximum of 14 additional days only if all of the following apply:
 1. The patient, as a result of a mental disorder, either threatened or attempted to commit suicide during the 72-hour 5150 or 14-day certification period or was detained originally for that reason
 2. The patient continues to present an imminent threat of suicide as determined by the professional staff of the designated facility
 3. The facility providing additional intensive treatment is equipped and staffed to provide treatment, and is designated by the county, and agrees to admit the person
 4. The person has been advised of, but has not accepted voluntary treatment*
- All provisions for the initial 14-day certification must be followed (Notice of Certification, informed of rights, informed consent for medication, access to an advocate, etc.), except that a certification review hearing is not required
 - The patient may request a writ hearing if he/she chooses to contest the recertification

5300: 180-DAY POST-CERTIFICATION FOR DANGER TO OTHERS

- At the expiration of the 5250 14 day certification, a person may be detained for up to 180 days of additional intensive treatment if the person, because of a mental disorder, presents a demonstrated danger of substantial physical harm to others and has:
 1. Attempted, inflicted, or made a serious threat of harm to another after having been taken into custody for evaluation and treatment; or
 2. Been taken into custody because of having attempted or inflicted harm to another; or
 3. Made a serious threat of substantial physical harm to another within seven days of being taken into custody
- A person's behavior in the past 6 years may be considered when determining his/her mental condition and demonstrated danger
- Neither conviction of a crime nor amenability to treatment is a necessary prerequisite to establishing a 180-day post certification (i.e. voluntary is not required to be offered)
- The petition for detention must be filed during the person's 5250 certification period by the County District Attorney (or County Counsel) or the person must be released
- The 5300 post-certification may be repeated if the patient continues to demonstrate danger at the conclusion of the 180 days

TARASOFF V. REGENTS OF THE U. OF CALIFORNIA: DUTY TO PROTECT

- "When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps. Thus, it may call for him to warn the intended victim, to notify the police, or to take whatever steps are reasonably necessary under the circumstances.
- The defendants (Regents of the UC) argued that psychiatrists were unable to accurately predict violence. The Court replied that they did not require therapists to render a perfect performance, "but only to exercise that reasonable degree of skilled care ordinarily possessed by members of their profession under similar circumstances."
- Conflicting interests of patient and potential victim:
 - "The protective privilege ends where the public peril begins."
- Breach of confidentiality:
 - "Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to . . . protect the client/patient, psychologist, or others from harm."

5270: 30-DAY HOLD FOR GRAVE DISABILITY

- Upon completion of a 5250 14-day period of intensive treatment, the person may be certified for an additional period of not more than 30 days if both of the following conditions are present:
 1. The professional staff of the facility treating the person has found that the person remains gravely disabled as a result of a mental disorder or impairment by chronic alcoholism
 2. The person remains unwilling or unable to accept treatment voluntarily
- A notice of certification must be given to the patient and his/her representative
- A certification hearing must be held within 4 days time, unless the patient requests a writ hearing and waives their right to a certification review hearing
- Concurrent Temporary Conservatorship:
 - If temporary conservatorship is obtained, it shall run concurrently with and not consecutively to the 5270 30-day certification period
 - Permanent conservatorship (W&I Sec. 5300) may be sought during 5250 or 5270
- The maximum involuntary detainment period for gravely disabled persons pursuant to Sec. 5150, 5250 and 5270.15 shall be limited to 47 days
 - This includes any periods of voluntariness

By the end of the 5270 (30-day) hold for grave disability, the patient must be:

1. Released
2. Signed in Voluntary
3. Conserved

During the 5270 30-day certification period it appears that the person is likely to require the appointment of a conservator, then the conservator referral must be made to allow sufficient time for conservatorship investigation and other related procedure.

The conservatorship hearing must be held by the 30th day of the certification period

LPS CONSERVATORSHIP

- **“Conservatorship” is a court created arrangement that gives one person (conservator) authority to make specific kinds of decisions on behalf of another person (conservatee)**
 - Conservator may be a public entity (Public Guardian) or private (family member, friend)
- **Establishment of LPS Conservatorship:**
 - Initially referred by a professional person conducting a comprehensive evaluation. Proposed conservatee must be gravely disabled as a result of a mental disorder, may or may not be in intensive treatment during assessment/referral for LPS conservatorship
 - If a Public Guardian from the individual’s County agrees, a petition to court can be made to establish conservatorship
- **Temporary Conservatorship (T-Con): 30-day**
- **LPS Conservatorship: 1 year, expires automatically 12 months from date of creation. Public Guardian may petition for a renewal yearly**

DUE PROCESS FOR MINORS: DETERMINING VOL OR 5150

Application is hereby made for the assessment and evaluation of _____

Residing at _____

_____, California, for up to 72- hour assessment, evaluation and crisis intervention or placement for evaluation and treatment at a designated facility pursuant to Section 5150, et seq. (adult) or Section 5585 et seq. (minor), of the W&I Code. If a minor, authorization for voluntary treatment is not available and to the best of my knowledge, the legally responsible party appears to be / is: (Circle one) Parent; _____

Based upon the above information, there is probable cause to believe that said person is, as a result of mental health disorder:

☐ A danger to himself/herself.

☐ A danger to others.

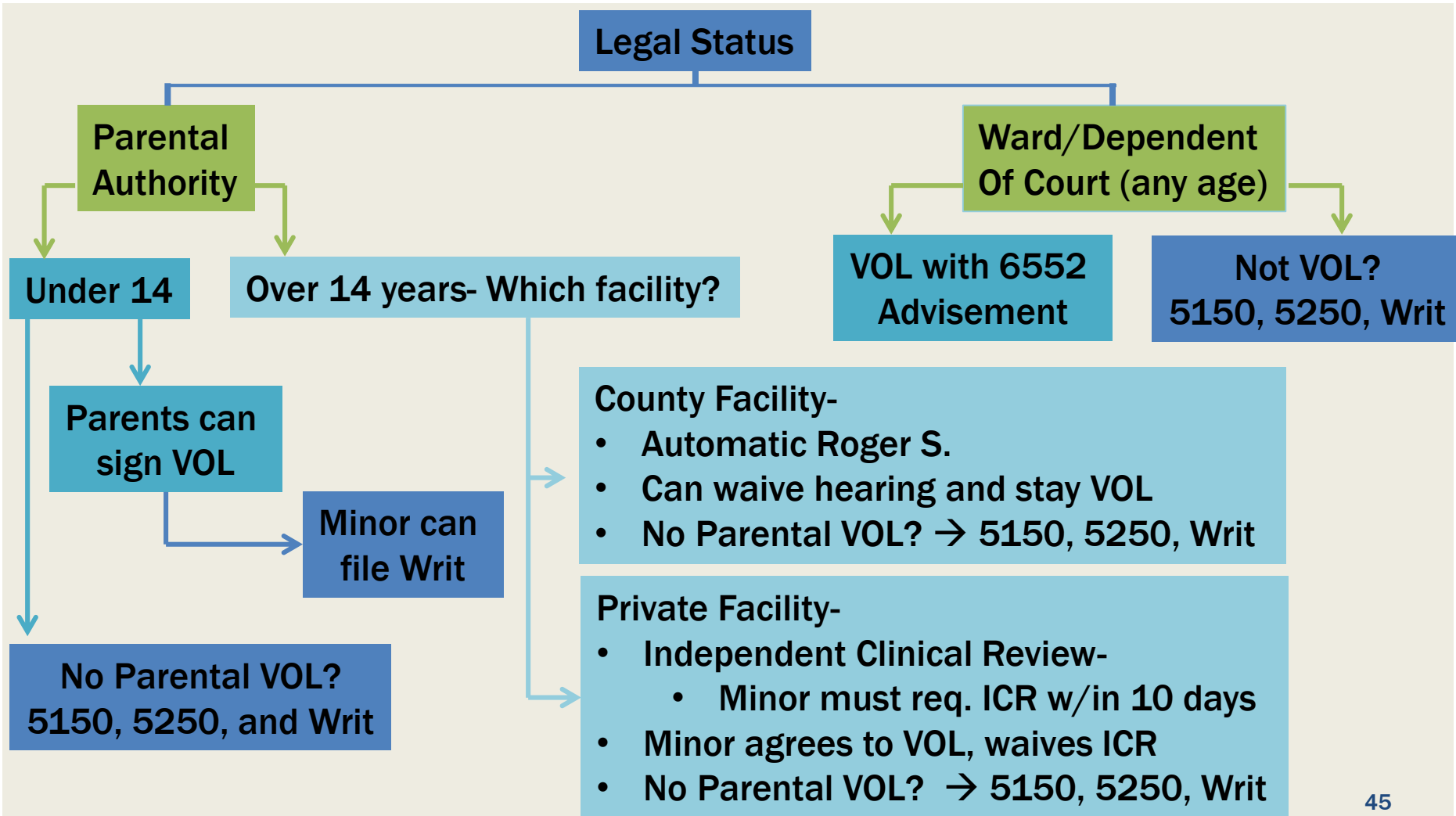
☐ Gravely disabled adult.

☐ Gravely disabled minor.

When a minor, as a result of a mental disorder, is a danger to others, or to him/herself, or gravely disabled and authorization for voluntary treatment is not available, an (authorized person) may, upon probable cause, take, or cause to be taken, the minor into custody...

- Minors have the same legal rights as adults with the respect to involuntary holds and must also meet the same criteria.
- Grave Disability for minors:
A minor is considered gravely disabled if, as a result of a mental disorder, he/she is “unable to use the elements of life which are essential to health, safety and development, including food, clothing, shelter, even though provided to the minor by others.”

DUE PROCESS FOR MINORS:



Summary:

- LPS law protects individuals' rights and provides due process
- LPS law allows practitioners to provide mental health services to individuals on a voluntary and involuntary basis
- Some rights cannot be denied under any circumstances such as the right to judicial review and advocacy
- Some rights may be denied with good cause or judicial proceedings
- Your County's Patient Rights' Advocate can assist you in determining the LPS Act legal standards